

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**NANCY MARTIN and
MARY BETH BRACKIN,**

Plaintiffs,

V.

**CITY OF DOTHAN and JUDGE
ROSE EVANS-GORDON,**

Defendants.

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Case No. 1:05-CV-1172-MEF

MOTION IN LIMINE TO EXCLUDE
DISSIMILAR ERRORS OF OTHER MAGISTRATES

COME NOW Defendants City of Dothan and Judge Rose Evans-Gordon (collectively “Defendants”), by and through counsel, and respectfully request the Court to order that counsel for Plaintiff, and through such counsel any and all witnesses for Plaintiff, be instructed by an appropriate order of this Court to refrain from making, directly or indirectly, any mention of or reference to, in any manner whatsoever, either in opening statement, questioning of witnesses, closing statements or otherwise, any of the matters set forth below. Defendants state that the below-referenced matters are inadmissible as evidence for any purpose in that they have no bearing on issues involved in this case or the remaining claims in this lawsuit. Permitting interrogation of witnesses, statements or comments to the jurors or prospective jurors, or offers of evidence concerning these matters would

unduly prejudice Defendants and sustaining objections to such questions, comments, or offers would not cure the effects of such prejudice, but would rather reinforce the impact of such prejudicial matters on the jurors. Defendants request that the Court prohibit:

1. The introduction into evidence or any reference to errors made by Ms. LaVera McClain and Ms. Eunice Knight. Plaintiff Brackin contends that Ms. McClain and Ms. Knight made mistakes similar to hers and were not disciplined. More specifically, Plaintiff Brackin alleges that McClain potentially caused a wrongful arrest by issuing a warrant for the wrong Michael McCord when there were two individuals named Michael McCord in the system, McClain allegedly failed to input that a defendant had completed a Defensive Driving Course which resulted in a warrant for his arrest, and that several complaints had been made by the police department about missing warrants and clerical errors allegedly due to mistakes made by both McClain and Knight. Brackin herself admits that Ms. McClain and Ms. Knight simply made “different clerical errors, computer errors, paperwork errors.” (Brackin Dep., p. 135: 3-9). Moreover, with respect to these errors, this Court noted that it is “not sure that these incidents, by themselves, would be sufficient to make McClain and Knight similarly situated to Brackin. However, it is undisputed that other magistrates, including McClain and Knight, also violated Judge Gordon’s No Contact order in that they had discussed the

pending investigation with people outside of the office.” Doc. 110, p. 32. Thus, any testimony, evidence, or argument relating in any way to Plaintiff’s assertion that McClain and Knight made clerical and other dissimilar errors and were not disciplined is not probative to the issues remaining after summary judgment. *See* Fed. R. Evid. 401-02.

2. Moreover, this evidence should be excluded under Fed. R. Evid. 403 as it creates a danger of unfair prejudice, unnecessary delay and confusion of the issues. Finally, permitting introduction of this evidence will result in a series of “mini-trials” as Defendants will have to address each alleged error.

3. On the basis of the above reasoning, Defendants respectfully request that the Court exclude any testimony or evidence relating to errors made by Ms. McClain and Ms. Knight.

Respectfully submitted,

/s/ Carol Sue Nelson

Carol Sue Nelson

One of the Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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/s/ Carol Sue Nelson
OF COUNSEL